

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3455 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MANJULABEN THAKORDAS DALAL	W/O.DETENU THAKORBHAI N DALAL
Versus	
COMMISSIONER OF POLICE	SURAT

Appearance:

MR NM KAPADIA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat, passed an order on April 9, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), detaining one Thakorbbhai Nanabhai Dalal of Gopalnagar Society of

Surat, under the provisions of the PASA Act.

#. The grounds of detention of even date indicate that the detaining authority took into consideration one offence registered against the detenu with Limbayat Police Station under the Bombay Prohibition Act. The authority also took into consideration statements of two anonymous witnesses and recorded a satisfaction for the need for exercise of powers under Section 9(2) of the Act. The detaining authority recorded that the detenu is immediately required to be prevented from pursuing his bootlegging activities and, therefore, provisions of PASA Act are required to be resorted to.

#. The petition is preferred by wife of the detenu. The main contention in the petition for assailing the detention is improper exercise of powers under Section 9(2) of the PASA Act.

#. Mr. Kapadia, learned advocate appearing for the petitioner, submitted that the statements of the two anonymous witnesses were recorded on the 4th and 8th April, 1999, respectively. The same were verified by the detaining authority on the 9th April, 1999 and the order was passed by the detaining authority on that very day. He submitted that, therefore, there was no time for the detaining authority to take into consideration relevant aspects for arriving at a satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. This improper exercise of power of claiming privilege has infringed the right of the detenu of making an effective representation and, therefore, the detention is rendered illegal and the petition may be allowed by quashing and setting aside the order of detention.

#. Mr. H.H. Patel, learned Assistant Government Pleader has opposed this petition. He submitted that, after considering all relevant aspects, the order is passed.

#. None of the respondent authorities has filed any affidavit in reply.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

7.1 The statements were verified on the 9th April, 1999 and the order of detention came to be passed on that

very day. There was, therefore, no time lag between these two events which could have made possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order of detention bad in law. The subjective satisfaction required to be recorded by the detaining is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on the 9th April, 1999 and the order is passed on that very day, there is no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise {Kalidas C. Kahar v. State of Gujarat & Ors.[1993 (2) GLR 1659]}.

7.2 In this regard, a Full Bench decision of this Court in the case of Chandrakant N. Patel v. State of Gujarat & Ors., 1994(1) GLR 761 may be profitably used. While considering an earlier decision in the case of Bai Amina v. State of Gujarat, 1981 GLR 1186, the Full Bench held that the law laid down in the case of Bai Amina's case is a good law. It has been observed that whether the detaining authority can be said to have applied its mind to all relevant aspects properly or not would be a question of fact in each case and will have to be decided in reference to the facts of the case. Since the satisfaction in that behalf has to be of the detaining authority, obviously, the promise of confidentiality given by the person recording the statement cannot by itself be regarded as sufficient ground withholding the disclosure of such particulars and materials. But it, after considering the general background, character, antecedent, criminal tendency or propensity, etc. of the detenu and the reluctance of the witnesses who gave the statements against the detenu, the detaining authority is satisfied about the necessity of withholding some particulars on merits, then it cannot be said that the

same was not done in public interest and the public interest likely to be subserved by non-disclosure did not outweigh or override the public interest intended to be served by disclosure of the relevant particulars and materials to the detenu. This indicates that the detaining authority has taken into consideration general background, character, antecedent, criminal tendency or propensity, etc. of the detenu, for which there must be some material before the detaining authority and the detaining authority must have sufficient time to take into consideration these aspects.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the detenu-Thakorbhai Nanabhai Dalal, dated 9th April, 1999 is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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